



U.S. DEPARTMENT OF
ENERGY

How new members are selected....and WHY

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Portsmouth SSAB Meeting
Piketon, Ohio



EM Environmental Management
safety ♦ performance ♦ cleanup ♦ closure



U.S. DEPARTMENT OF
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A Ports SSAB member is a member of

- ◇ the Environmental Management Site-Specific Advisory Board (EM SSAB)
- ◇ one of ~ 900 federal advisory committees (FAC)
- ◇ one of ~ 45,000 FAC members



Federal Advisory Committee Act

Public Law 92-463, effective January 5, 1973. Requires the establishment of a Committee Management Secretariat to provide Government-wide oversight of advisory committees. In addition, the Act establishes a framework covering the creation, management, operation, and termination of all advisory committees reporting to the Executive Branch.



Federal Advisory Committee Act was designed to fulfill two basic purposes:

➤ **To Enhance Public Accountability of Advisory Committees.**

To control the undue influence of special interests by balancing committee membership, and to ensure that public access to committee deliberations is maximized.

➤ **To Reduce Wasteful Expenditures on Advisory Committees.**

To improve the overall management of committee activities by establishing a set of management controls. These controls were designed to, among other objectives:

- Monitor Federal advisory committee costs;
- Identify and eliminate unproductive and/or unnecessary committees; and
- Provide for an annual report of committee activities and accomplishments to the Congress.



Executive Order 12838

Effective February 10, 1993. Directs the Heads of all Departments and agencies to reduce the number of advisory committees "not required by statute" by one-third. Requires that the establishment of all new discretionary advisory committees be approved by the Director of the Office of Management and Budget (OMB), consistent with identified needs relating to national security, health or safety, or similar national interests.

Vice Presidential Memorandum, dated June 28, 1994

Expands the President's policy of controlling the number of Federal advisory committees by requiring Departments and agencies to: (a) work with the Congress to eliminate unneeded committees mandated by statute; (b) generally not support proposals to create new committees through legislation; and (c) reduce committee costs by at least five percent.



Federal Advisory Committee Act

- ◇ Open Government Law (FOIA, SunSA)
- ◇ Ensures public input on gov't decisions
- ◇ Prevents domination by special interests
- ◇ Provide for open discussions of policy



Four sources of authority for establishing an advisory committee:

- **“(a) Required by statute.** By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);
- **(b) Presidential authority.** By Executive order of the President or other Presidential directive (*non-discretionary*);
- **(c) Authorized by statute.** By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or
- **(d) Agency authority.** By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).”



FACA Major Requirements

- **Agencies must design uniform administrative guidance and management reports and controls**
- **Committees must be chartered (renewal 2 years)**
- **Meetings must be open to the public (w/exceptions) and allow public comment**
- **Detailed meeting minutes must be kept**
- **Committees will be terminated when**
 - Stated objectives accomplished
 - Their work has become obsolete
 - Cost of operations is excessive in relation to benefits to Federal Government



FACA Major Requirements

Advisory committee memberships are to be fairly balanced in terms of the points of view represented and the functions to be performed.



FACA

41 CFR § 102-3

**Advisory Committee
Management Manual
(DOE M 515.1-1)**

**EM Site-Specific Advisory Board
Charter (2006)**

**EM Site-Specific Advisory Board Guidance
And SOPP**

Site By-laws and SOPP



GSA Code of Federal Regulations **CFR 41 § 102-3**

Fairly balanced membership. The agency plan to attain balanced membership ...will consider a cross-section of those directly affected, interested and qualified, as appropriate to the nature and functions of the advisory committee.



FACA

41 CFR § 102-3

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DOE Advisory Committee Management Manual

- Selections and appointment by Secretary and designees
- Individuals selected based on potential contributions to committee
- Members serve without compensation
- Membership must represent a fair balance of interests



DOE Manual and EM SSAB Guidance

- **Affected people**
- **Statistics from the U.S. Census Bureau**
- **A range of interests, determined by identification with local and Tribal governments, community organizations, other organizations around specific interests**



Other Membership Guidance

- ◇ **Key communities [NRC, 2008, p. 194]**
- ◇ **GAO Report on FACA: Issues Related to the Independence and Balance of Advisory Committees (2004): Members should not be appointed as members purely on the basis of their expertise**



Key Points for Balanced Membership

- Points of view for the function to be performed
- Numerical parity of holders of various points of view not required
- Separate from considerations of race, gender, geographic regions, etc.
- No individual or group has the right to be on a committee



Selection Process

- Site Recruitment through meetings, newspapers and other media, word-of-mouth, special events
- Sometimes input from board or independent group
- Nominations forwarded to DOE-EM HQ
- Reviewed by EM-42, Committee Management Ofc., Executive Secretariat, General Counsel, Assistant Sec'y
- Appointment letters sent



Local site board member responsibilities

- To attend regular meetings and receive training;
- To review and comment on EM and other documents within their purview that come before the Board, and submit timely recommendations to EM;
- To work collaboratively and respectfully with other Board members and liaisons in the best interests of both the Board and the public;
- To serve on at least one Committee or Task Force during any given six month period as appointed by the Chair; and
- To abide by the terms and conditions of the EM SSAB Charter and these operating procedures



Local site board member responsibilities

Declare any potential conflict of interest.

Representative members are not subject to the Federal conflict of interest statutes and regulations. BUT DOE requires that members be recused from working on matters before the advisory committee in which they have a direct financial interest. Members cannot use their position on the Board for their private gain or for the private gain of others and cannot accept gifts given because of a member's position on the board. Employees of contractors do not have an inherent or inevitable conflict of interest that prohibits them from serving on the Board.



DOE-EM Responsibilities

- Recommendations of advisory committees should be the result of independent judgment. [FACA § 5(b)(3); 41 CFR § 102-3.105(g)]
- Advisory committees must be adequately funded by the appropriate agency. [41 CFR § 102-3.95(a)]
- Advisory committee members may be subject to ethics and conflict-of-interest statutes, regulations and other rules. [41 CFR § 102-3.105(h); Appendix A-IV. to Subpart C; and 5 CFR § 2634.903, .904 (OGE)]
- Agencies should practice openness and seek to be as inclusive as possible. [41 CFR § 102-3.95(d)]
- Agencies should continually seek feedback from advisory committee members regarding effectiveness of advisory committee's activities; and should regularly communicate to members how their advice has affected Agency programs and decision-making. [41 CFR § 102-3.95(e)]



Committees chartered under FACA exist solely for the purpose of providing advice to the government agency or agencies specified in their charters.



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